

REMARKS

Claims 1-20 are pending in the application. All of these claims have been rejected. Claims 1, 6, 13-15 and 19 have been amended.

The Applicant wishes to thank the Examiner and his Supervisor, Dean Reichard, for the courtesies they extended during the telephonic interview conducted with the Applicant and the undersigned on August 19, 2003.

Claim Objections

The Examiner objected to claim 19 because its preamble did not conform to that of the other dependent claims. Claim 19 has been amended to correct this informality in the claim.

Claim Rejections Under 35 U.S.C. § 102(b)

The Examiner rejected claims 1, 5 and 12 under 35 U.S.C. §102(b) as being anticipated by Griffioen (US 5,971,035 hereinafter, Griffioen). Applicant has amended claim 1, and through their dependency claims 5 and 12, to recite that the conduit be metal. Support for this amendment can be found in the specification on page 5, line 5. This amendment more clearly defines the Applicant's invention, which is directed to an improved sealed conduit system designed to satisfy National Electrical Code Standard 501 for explosionproof conduits. *See* Exhibit 1 hereto. As can be seen on page 636 of the NEC, conduits for such systems must be a "rigid metal conduit." Amended claim 1, and through their dependency claims 5 and 12, now recite such a conduit.

In contrast, Griffioen discloses a ducting system for fiber optic cables, which are placed underground in large concrete pipes. *See* Griffioen, Col. 4, lines 22-26. The ducting system in Griffioen is thus not intended nor designed for use in explosion-prone environments.

More to the point, Griffioen fails to disclose a sealed metal conduit, as now recited by amended claim 1, and through their dependency claims 5 and 12. The Applicant's amendment therefore overcomes the Examiner's 102(b) rejection of claims 1, 5 and 12 in view of Griffioen. Accordingly, amended claims 1, 5 and 12 are patentably distinct from Griffioen and should therefore be allowed.

Claim Rejections Under 35 U.S.C. § 103(a)

The Examiner rejected claims 2-4 under 35 U.S.C. § 103(a) as being unpatentable over Griffioen in view of Cameron (US 5,560,655 hereinafter, Cameron); claims 6-8, 15, 17, 18 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Griffioen in view of Hutchinson (US 4,301,325 hereinafter, Hutchinson); claim 11 under 35 U.S.C. § 103(a) as being unpatentable over Griffioen in view of Bertini et al (US 6,489,554 hereinafter, Bertini); claims 9, 10 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Griffioen in view of Klein (US 4,456,784 hereinafter, Klein); claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Griffioen in view of Klein as applied in claim 13 and further in view of Cameron; claim 16 under 35 U.S.C. § 103(a) as being unpatentable over Griffioen in view of Hutchinson as applied in claim 15, and further in view of Cameron; and claim 19 under 35 U.S.C. § 103(a) as being unpatentable over Griffioen in view of Hutchinson as applied in claim 15 and further in view of Klein.

Griffioen is the primary reference in each of these rejections. However, as pointed out above, Griffioen does not disclose a metal conduit, as now required by all of the pending claims either directly or through their dependency on another claim. On the contrary, the ducting in Griffioen is most likely formed of a flexible plastic material. *See, e.g.*, Field Lining Systems, Inc. website at <http://greatwesternliner.com/pipefiberoptic.html> (describing fiber optic cable ducting as being formed of a plastic material for flexibility purposes), Exhibit 2

hereto; *see also*, Col. 3, lines 36-45 of U.S. Patent No. 5,394,502 cited in Griffioen at Col. 3, line 63 (describing the Y_ or T-piece used in conjunction with the fiber optic cable as being formed of a plastic material also for flexibility reasons), Exhibit 3 hereto. Therefore, the seal conduits that would result from each of the proposed combinations suggested by the Examiner would not be explosion proof because each one of these conduits would be formed out of plastic and thus not meet National Electrical Code standards. Accordingly, all of the pending claims are patentably distinct from the prior art cited by the Examiner, either alone or in combination, because all of the claims, as now amended, recite and thus require a metal conduit.

Finally, although metal conduits were known at the time of Griffioen, one of ordinary skill in the art would not have considered modifying the ducting of Griffioen so as to make it out of metal because to do so would preclude its use as tubing for fiber optical cable, which by its very nature must be flexible. Nor would one of ordinary skill in the art have even used Griffioen as a starting point for arriving at the present invention, as now claimed, because of its use in an application requiring a flexible tube absent hindsight.

Accordingly, all of the pending claims, as now amended, are believed to be patentably distinct from the prior art of record, either alone or in combination, and as such Applicant respectfully submits that the pending rejections be withdrawn and all such claims allowed.

SUMMARY

In light of the above remarks, reconsideration and withdrawal of the outstanding rejection is respectfully requested. Early notice of the allowance is earnestly solicited. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone or facsimile. Applicant requests that the fee in the amount of \$55.00 for a one-month extension of time be charged to Baker Botts L.L.P. Deposit Account No. 02-383, (*formerly Baker & Botts, L.L.P.*) Order Number 002905.0110. (Applicant's small entity status has not changed.) If there are any additional fees due with the filing of this Response, including any additional fees for an extension of time, Applicant respectfully petitions the Commissioner for such an extension and direct that any and all fees be charged to Baker Botts L.L.P., Deposit Account No. 02-0383, (*formerly Baker & Botts, L.L.P.*) Order Number 002905.0110.

Respectfully submitted,

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